

JS 44C/SDNY  
REV. 1/2008

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

## PLAINTIFFS

MELESSA A. ROSA

## DEFENDANTS

JENNIFER L. LUXENBERG

## ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Bader Yakaitis & Nonnenmacher, LLP, 350 Fifth Ave., NY, NY 10118  
(212) 465-1110

## ATTORNEYS (IF KNOWN)

Mead, Hecht, Conklin & Gallagher, LLP, 109 Spencer Pl.,  
Mamaroneck, NY 10543 (914) 899-3100CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)  
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

28 U.S.C. 1332 and 1441 - The action seeks damages for personal injury arising out of a motor vehicle accident.

Has this or a similar case been previously filed in SDNY at any time? No? ☒ Yes? ☐ Judge Previously Assigned \_\_\_\_\_If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

(PLACE AN [x] IN ONE BOX ONLY)

## NATURE OF SUIT

## TORTS

## ACTIONS UNDER STATUTES

## CONTRACT

- [ ] 110 INSURANCE  
[ ] 120 MARINE  
[ ] 130 MILLER ACT  
[ ] 140 NEGOTIABLE INSTRUMENT  
[ ] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT  
[ ] 151 MEDICARE ACT  
[ ] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)  
[ ] 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS  
[ ] 160 STOCKHOLDERS SUITS  
[ ] 190 OTHER CONTRACT  
[ ] 195 CONTRACT PRODUCT LIABILITY  
[ ] 196 FRANCHISE

## REAL PROPERTY

- [ ] 210 LAND CONDEMNATION  
[ ] 220 FORECLOSURE  
[ ] 230 RENT LEASE & EJECTMENT  
[ ] 240 TORTS TO LAND  
[ ] 245 TORT PRODUCT LIABILITY  
[ ] 290 ALL OTHER REAL PROPERTY

## PERSONAL INJURY

- [ ] 310 AIRPLANE  
[ ] 315 AIRPLANE PRODUCT LIABILITY  
[ ] 320 ASSAULT, LIBEL & SLANDER  
[ ] 330 FEDERAL EMPLOYERS' LIABILITY  
[ ] 340 MARINE  
[ ] 345 MARINE PRODUCT LIABILITY  
[ ] 350 MOTOR VEHICLE  
[ ] 355 MOTOR VEHICLE PRODUCT LIABILITY  
[ ] 360 OTHER PERSONAL INJURY

## ACTIONS UNDER STATUTES

## CIVIL RIGHTS

- [ ] 441 VOTING  
[ ] 442 EMPLOYMENT  
[ ] 443 HOUSING/ ACCOMMODATIONS  
[ ] 444 WELFARE  
[ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT  
[ ] 446 AMERICANS WITH DISABILITIES - OTHER  
[ ] 440 OTHER CIVIL RIGHTS

## PERSONAL INJURY

- [ ] 362 PERSONAL INJURY - MED MALPRACTICE  
[ ] 365 PERSONAL INJURY PRODUCT LIABILITY  
[ ] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

## PERSONAL PROPERTY

- [ ] 370 OTHER FRAUD  
[ ] 371 TRUTH IN LENDING  
[ ] 380 OTHER PERSONAL PROPERTY DAMAGE  
[ ] 385 PROPERTY DAMAGE PRODUCT LIABILITY

## PRISONER PETITIONS

- [ ] 510 MOTIONS TO VACATE SENTENCE  
[ ] 530 HABEAS CORPUS  
[ ] 535 DEATH PENALTY  
[ ] 540 MANDAMUS & OTHER  
[ ] 550 CIVIL RIGHTS  
[ ] 555 PRISON CONDITION

## FORFEITURE/PENALTY

- [ ] 610 AGRICULTURE  
[ ] 620 OTHER FOOD & DRUG  
[ ] 625 DRUG RELATED SEIZURE OF PROPERTY  
[ ] 630 LIQUOR LAWS  
[ ] 640 RR & TRUCK  
[ ] 650 AIRLINE REGS  
[ ] 660 OCCUPATIONAL SAFETY/HEALTH  
[ ] 690 OTHER

## LABOR

- [ ] 710 FAIR LABOR STANDARDS ACT  
[ ] 720 LABOR/MGMT RELATIONS  
[ ] 730 LABOR/MGMT REPORTING & DISCLOSURE ACT  
[ ] 740 RAILWAY LABOR ACT  
[ ] 790 OTHER LABOR LITIGATION  
[ ] 791 EMPL RET INC SECURITY ACT

## IMMIGRATION

- [ ] 462 NATURALIZATION APPLICATION  
[ ] 463 HABEAS CORPUS- ALIEN DETAINEE  
[ ] 465 OTHER IMMIGRATION ACTIONS

## BANKRUPTCY

- [ ] 422 APPEAL 28 USC 158  
[ ] 423 WITHDRAWAL 28 USC 157

## PROPERTY RIGHTS

- [ ] 820 COPYRIGHTS  
[ ] 830 PATENT  
[ ] 840 TRADEMARK

## SOCIAL SECURITY

- [ ] 861 HIA (1395ff)  
[ ] 862 BLACK LUNG (923)  
[ ] 863 DIWC/DIWW (405(g))  
[ ] 864 SSID TITLE XVI  
[ ] 865 RSI (405(g))

## FEDERAL TAX SUITS

- [ ] 870 TAXES (U.S. Plaintiff or Defendant)  
[ ] 871 IRS-THIRD PARTY 26 USC 7609

## OTHER STATUTES

- [ ] 400 STATE REAPPORTIONMENT  
[ ] 410 ANTI-TRUST  
[ ] 430 BANKS & BANKING  
[ ] 450 COMMERCE  
[ ] 460 DEPORTATION  
[ ] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)  
[ ] 480 CONSUMER CREDIT  
[ ] 490 CABLE/SATELLITE TV  
[ ] 810 SELECTIVE SERVICE  
[ ] 850 SECURITIES/ COMMODITIES/ EXCHANGE  
[ ] 875 CUSTOMER CHALLENGE 12 USC 3410  
[ ] 890 OTHER STATUTORY ACTIONS  
[ ] 891 AGRICULTURAL ACTS  
[ ] 892 ECONOMIC STABILIZATION ACT  
[ ] 893 ENVIRONMENTAL MATTERS  
[ ] 894 ENERGY ALLOCATION ACT  
[ ] 895 FREEDOM OF INFORMATION ACT  
[ ] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE  
[ ] 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

## ORIGIN

- ☐ 1 Original Proceeding
 ☒ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court AND at least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

## BASIS OF JURISDICTION

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1322, 1441)

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☒ 4 DIVERSITY

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	[ ]	[ ]	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[ ]	[ ]	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	[ ]	[ ]
CITIZEN OF ANOTHER STATE	[X]	[X]	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ]	[ ]	FOREIGN NATION	[ ]	[ ]

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Melessa A. Rosa, 4507 West T Ryan Lane, Laveen, Arizona 85339, Maricopa County

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Jennifer Luxenberg, 2410 36th Avenue, San Francisco, California, San Francisco County

## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Not applicable

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN  
(DO NOT check either box if this a PRISONER PETITION.)

DATE

SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

[ ] NO  
[X] YES (DATE ADMITTED Mo. March Yr. 1981)  
Attorney Bar Code # KC1259

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

J. Michael McMahon, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

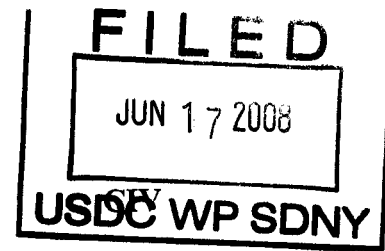
-----X  
MELESSA A. ROSA,

Plaintiff,

-against-

JENNIFER L. LUXENBERG.,

Defendant.  
-----X



PETITION OF  
REMOVAL

**08 CIV. 5459**

**JUDGE RAKOFF**

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK, WHITE PLAINS:

Defendant, JENNIFER L. LUXENBERG, files this Petition for Removal under 28.

U.S.C. §§ 1441, 1446 and Federal Rules of Civil Procedure , Rule 81(c) and Local Rule 81.1 and respectfully shows the Court, upon information and belief:

- A. The petitioner is the alleged defendant in the above-entitled action.
- B. The above-entitled action was commenced in Supreme Court of the State of New York, County of Bronx, on or about April 24, 2008, under Index No.: 303335/08, and is now pending in that Court.
- C. The above-mentioned action, is a civil action to recover money damages for alleged personal injury.
- D. The action is one of which the United States District Courts are given original jurisdiction under 28 U.S.C. § 1332(a) by reason of the diversity of citizenship of the parties.
- E. Because CPLR 3017(c) states that a complaint shall not state the amount of damages, defendant does not know the exact amount sought by plaintiff. Without any concession or admission of liability, upon information and belief, the amount of controversy in the action,

exclusive of interest and costs, may exceed \$75,000.

F. Thirty (30) days have not yet expired since the action thereby became removable to this Court.

G. At the time of the commencement of this action, upon information and belief, plaintiff was and now is a resident of the State of Arizona. Her address, according to the Police Accident Report, is 4507 West T Ryan Lane, Laveen, Arizona 85339. At the time of the commencement of this action, petitioner, JENNIFER LUXENBERG, was and still is a resident of the State of California. Her residence is 2410 36<sup>th</sup> Avenue, San Francisco, California 94116. At the time of the accident and before the commencement of the action, Petitioner resided at 528 Brook Avenue, Riverdale, New Jersey 07675.

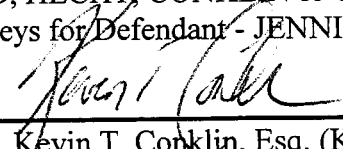
H. Copies of all pleadings, process and order received by petitioner or her insurer in this action are attached and marked **Exhibit "A"**.

I. Upon information and belief, the summons and verified complaint have not yet been received by the petitioner, JENNIFER L. LUXENBERG.

WHEREFORE, petitioner requests that the above-entitled action be removed from the Supreme Court of the State of New York, County of Bronx, to the United States District Court for the Southern District of New York.

Dated: Mamaroneck, New York  
June 16, 2008

Yours, etc.,  
MEAD, HECHT, CONKLIN & GALLAGHER, LLP  
Attorneys for Defendant - JENNIFER L. LUXENBERG

  
By: Kevin T. Conklin, Esq. (KC 1259)  
109 Spencer Place  
Mamaroneck, New York 10543  
(914) 899-3100  
Our File No. 028-03-7424

TO: BADER YAKAITIS & NONNENMACHER, LLP  
Attorneys for Plaintiff  
350 Fifth Avenue, Suite 7210  
New York, New York 10118  
(212) 465-1110

**EXHIBIT A**

UNITED STATES

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

MELESSA A. ROSA,

Plaintiff,

-against-

JENNIFER L. LUXENBERG,

Defendant.

Index No.: 303 115 - 68

Date Purchased:

SUMMONS

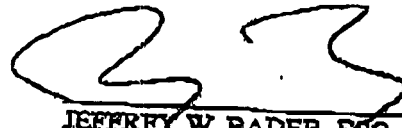
Plaintiff designates BRONX  
County as the place of trial.

The basis of venue is:  
Venue is based on CPLR  
503(a)

To the above named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorney(s) within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
April 22, 2008



JEFFREY W. BADER, ESQ.  
BADER YAKOUBIS & NONNENMACHER, LLP  
Attorneys for Plaintiff  
Empire State Building  
350 Fifth Avenue, Suite 7210  
New York, New York 10118  
(212) 465-1110

TO:

JENNIFER L. LUXENBURG  
528 Brooke Ave  
Rivervale, New Jersey 07675

BRONX COUNTY  
COUNTY CLERK

08 APR 24 AM 5:09

RECEIVED

VERIFICATION

STATE OF NEW YORK  
COUNTY OF NEW YORK

The undersigned, being an attorney duly admitted to practice in the Courts of the State of New York, affirms under the penalties of perjury, that I am one of the attorneys for the plaintiff(s) in the within action.

That I have read and now the contents of the foregoing COMPLAINT and that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters I believe it to be true.

This verification is made by affirmant and not by the plaintiff(s) herein because the plaintiff(s) is/are not within the county where affirmant maintains his/her office.

This verification is based on information furnished to affirmant by the plaintiff(s) in this action and information contained in affirmant's file.

Dated: New York, New York  
April 22, 2008

  
JEFFREY W. RADER, ESQ.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

MELESSA A. ROSA,

Plaintiff,

-against-

JENNIFER L. LUXENBERG,

Defendant.

Index No.:

Date Purchased:

VERIFIED COMPLAINT

Plaintiff, by her attorneys, **BADER YAKAITIS & NONNENMACHER, LLP**, complaining of the Defendants, respectfully alleges, upon information and belief:

1. That this action is brought pursuant to the provisions of the New York State Comprehensive Automobile Insurance Reparations Act and plaintiff has complied with all of the Conditions thereof.
2. That plaintiff has sustained serious injury as defined in Sec. 5102, Subdiv. D of the Insurance Law of the State of New York.
3. That by reason of the foregoing, plaintiff is entitled to recover for non-economic losses as are not included within the definition of "basic economic loss" as set forth in Sec. 5102, subdiv. A of the Insurance Law.
4. That plaintiff is a "covered person" as defined in Sec. 5102, Subdiv. A of the Insurance Law.
5. That on March 14, 2007, Defendant **JENNIFER L. LUXENBERG** was the owner of a motor vehicle bearing New Jersey State license plate number **5TX1OV**.

6. That on March 14, 2007, Defendant JENNIFER L. LUXENBERG operated the aforementioned motor vehicle bearing New Jersey State license plate number 5TX10V.

7. That on March 14, 2007, Defendant JENNIFER L. LUXENBERG was the owner of a motor vehicle bearing New Jersey State license plate number 5TX10V.

8. That on March 14, 2007, Defendant JENNIFER L. LUXENBERG operated the aforementioned motor vehicle bearing New Jersey State license plate number 5TX10V.

7. At all times herein mentioned, Plaintiff MELESSA A. ROSA was the operator of a motor vehicle bearing Missouri State license plate number 9AF69J.

8. At all times herein mentioned, Plaintiff MELESSA A. ROSA operated the aforementioned motor vehicle with the permission and consent of the owner thereof.

9. At all times herein mentioned, Plaintiff MELESSA A. ROSA operated the aforementioned motor vehicle upon the business of the owner thereof.

10. At all times herein mentioned, south east corner of Bowery and Canal Street, New York, New York were public roadways, streets and/or thoroughfares.

11. That on March 14, 2007, Defendant JENNIFER L. LUXENBURG was operating the aforesaid motor vehicle bearing New Jersey State license plate number 5TX10V at the aforementioned location.

12. That on March 14, 2007, Defendant JENNIFER L. LUXENBURG was operating the aforesaid motor vehicle bearing New Jersey State license plate number 5TX10V at the aforementioned location.

13. That on March 14, 2007, Plaintiff MELESSA A. ROSA was operating the aforesaid motor vehicle bearing Missouri State license plate number 9AF69J at the aforementioned location.

13. That on March 14, 2007, at the aforementioned location, defendant's motor vehicle came into contact with the plaintiff's motor vehicle.

14. That as a result of the aforesaid contact, Plaintiff MELESSA A. ROSA was injured.

15. That the aforesaid occurrence was caused wholly and solely by reason of the negligence of the Defendant without any fault or negligence on the part of the Plaintiff contributing thereto.

16. The Defendant was negligent, careless and reckless in the ownership, operation, management, maintenance, supervision, use and control of the aforesaid vehicle and the Defendant was otherwise negligent, careless and reckless under the circumstances then and there prevailing.

17. That by reason of the foregoing, Plaintiff MELESSA A. ROSA sustained severe and permanent personal injuries; and Plaintiff MELESSA A. ROSA was otherwise damaged.

18. That this action falls within one or more of the exceptions set forth in CPLR 1602.

19. Plaintiff herewith demands a trial by jury.

WHEREFORE, Plaintiff demands judgment against the Defendant in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction in this matter.

Dated: New York, New York  
April 22, 2008

Yours, etc.

  
JEFFREY W. BADER, ESQ.  
BADER YAKAITIS & NONNENMACHER, LLP

Attorneys for Plaintiff  
Empire State Building  
350 Fifth Avenue, suite 7210  
New York, New York 10118  
(212) 465-1110

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PAGE 8/9 \* RCVD AT 6/5/2008 1:20:43 PM [Central Daylight Time] \* SVR:hyh000B/5 \* DNS:51355 \* CSID: \* DURATION (mm-ss):01-18

PAGE 11/20 \* RCVD AT 6/5/2008 3:23:23 PM [Central Daylight Time] \* SVR:hyh000B/21 \* DNS:52066 \* CSID: \* DURATION (mm-ss):04-31

Index No.  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

MELESSA A. ROSA,

Plaintiff,

-against-

JENNIFER L. LUXENBERG,

Defendant.

**SUMMONS AND VERIFIED COMPLAINT**

**BADER YAKAITIS & NONNENMACHER, LLP**

*Attorneys for Plaintiff(s)*  
350 Fifth Avenue  
New York, NY 10118  
(212)465-1110

TO

Service of a copy of the within  
Dated,

is hereby admitted.

\_\_\_\_\_  
Attorney(s) for  
Please take notice

NOTICE OF ENTRY  
that the within is a (certified) true copy of a(n)  
duly entered in the office of the clerk of the within named court on

\_\_\_\_\_  
that an order of which the within is a true copy will be presented for settlement to the HON. one of the  
Judges of the within named court, at on 200 at M.

Dated,

Yours, etc.  
**BADER YAKAITIS & NONNENMACHER, LLP.**  
*Attorneys for Plaintiff(s)*  
350 Fifth Avenue, Suite 7210  
New York, NY 10118  
(212)465-1110